

Appl. No. 10/632,672
Response Dated August 25, 2005
Reply to Office Action mailed June 29, 2005

Remarks/Arguments

Applicants have received and carefully reviewed the Office Action of the Examiner mailed June 29, 2005. Claims 1-16 are pending and claims 15 and 16 are withdrawn from consideration. Reconsideration and reexamination are respectfully requested.

Information Disclosure Statement

Applicants filed a supplemental IDS that was received by the PTO on December 1, 2004 listing two US patents and one European patent. Applicants have not received a copy of the initialed 1449 and again request the Examiner provide a copy with the next Office Action.

Allowable Subject Matter

Applicants thank the Examiner for stating that claims 6-14 are allowed and claims 3-4 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Rejection under 35 U.S.C. § 103

Claims 1, 2, and 5 remain rejected as being unpatentable over Zurek et al. (US 5,576,218). The Examiner asserts that Zurek et al. teaches a motorized damper 28 with at least one vane 38, and first 32 and second 34 interchangeable ports for input and output modes. The Examiner asserts that it would have been an obvious matter of choice to reverse the damper during installation in order to reverse the ports. Applicants respectfully traverse the rejection.

In response to Applicants' previous arguments, the Examiner first maintains that there is no structural difference between the broad claims and the device of Zurek et al. Applicants respectfully submit that the structure of the airflow ports of Zurek et al. is completely different from the structure of the ports of the claimed invention, which send and receive control signals. Zurek et al. teach that "treated air from the heater or the chiller enters the respective damper via the input port 32" and that "all air entering the diverter through port 32 is exited through port 34"

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(emphasis added). Zurek et al. thus use the term "port" to describe openings through which air flows. In contrast, the term "port" is used in the instant specification to describe an element that sends and/or receives control signals. For example, at page 7, lines 3-4, the specification states that "ports of each of the dampers 220, 230, and 240 can function to both receive and send control signals." Page 7, lines 9-15 of the instant specification states:

As illustrated by FIGS. 2 and 3, the ports of each damper, such as ports 222 and 224 of damper 220, preferably function in both an input mode and an output mode to receive and send signals.

Preferably, first and second ports 220 are identical in shape so that each can accept the same-shaped plug. In this manner, a plug of an input wire can be inserted into either port, and a plug of an output wire can be inserted into the other port.

Emphasis added. The specification further describes the "ports" on page 9, lines 10-17 as follows:

It can be advantageous to configure each port to function in both an input and an output mode so that wiring of the air handling system can be easily accomplished. For example, when a wire is run from one damper to another, the plug at the end of the wire can be inserted into either port on the next damper without regard to whether the wire will carry an input signal for the damper or an output signal from the damper. A similarly-shaped plug can then be inserted into the other port of the damper and the attached wire run to another damper or controller as desired.

Emphasis added. Applicants submit that one of ordinary skill in the art, upon reading the instant specification, would not interpret the term "port" in the claims as an airflow port, as taught in Zurek et al.

The Examiner's second assertion is that the broadest interpretation must be given to all claim language, and that interpreting "port" in the instant claims as providing for air movement is not unreasonable. Applicants respectfully disagree. The Examiner does not appear to be giving the term "port" the meaning that would be understood by one of ordinary skill in the art in the context of the instant specification.

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MPEP 2111 quotes *In re Morris*, 44 USPQ2d 1023, 1027-28 (Fed. Cir 1997):

the "PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification."

Emphasis added. MPEP 2111.01 states that "[c]laim terms are presumed to have the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003)."

MPEP 2111.01 further states:

It is the use of the words in the context of the written description and customarily by those skilled in the relevant art that accurately reflects both the "ordinary" and the "customary" meaning of the terms in the claims. *Ferguson Beauregard/Logic Controls v. Mega Systems*, 350 F.3d 1327, 1338, 69 USPQ2d 1001, 1009 (Fed. Cir. 2003) (Dictionary definitions were used to determine the ordinary and customary meaning of the words "normal" and "predetermine" to those skilled in the art. In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.

(Emphasis added). The MPEP thus clearly states that claim terms are to be given the ordinary and customary meanings according to one of ordinary skill in the art, considering what information is provided in the specification.

The attached printout from the Merriam-Webster online dictionary indicates 55 definitions for the term "port." In view of the volume of definitions for "port", Applicants submit that the intrinsic record must be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the word by the inventor. Applicants submit that the use of "port" by the instant inventors does not encompass the airflow ports of Zurek et al:

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Applicants submit that one of ordinary skill in the art would not consider the airflow ports of Zurek et al. as having the same structure as the signal-transmitting ports of the instant claims. Applicants submit that the Examiner is using a definition of "port" that is clearly inconsistent with the use of the word by the inventors, which is not proper according to MPEP 2111. Withdrawal of the rejection is respectfully requested.

The Examiner's third assertion is that it would have been an obvious matter of choice to reverse the damper 28 of Zurek et al. during installation in order to install the damper without regard of ports so that the input and output ports may be reversed. The Examiner asserts that it is a common practice for one skilled in the art to reverse an installation in order to obtain a reverse function or result. Applicants respectfully submit that there must still be some motivation for reversing an installation to obtain a reverse function or result, other than that provided by Applicants' specification, and that the Examiner has not provided such motivation. No indication as to why one would have been motivated to reverse the airflow ports of Zurek et al. has been provided.

Zurek et al. teach a thermal cycling apparatus in which the amount of warm and cold air sent to the mixer 42 is regulated by damper systems 28 and 30, each having air input ports 32, air output ports 34, and air return ports 36. See column 6, lines 24-34 and FIG. 2. Zurek et al. also teach that the apparatus provides an environment in which the "specimen is continuously in contact with a moving fluid stream having a constant volumetric flow rate with an almost instantaneously variable temperature." See column 7, lines 8-12. Zurek et al. teach the air exiting from specimen chamber 10 via conduit 46 and returning to the blowers 12, 20. Zurek et al. also teach excess exhaust air exiting the damper through port 36 to the recirculation paths. Zurek et al. teach the above as "maintaining a substantially constant volumetric flow rate throughout the closed system." See column 7, lines 15-28. Zurek et al. thus already appear to teach an apparatus that provides means for returning excess air to the blowers, thus effectively "reversing" the air to the heater or chiller. With such features, there does not appear to be any motivation for one of ordinary skill in the art to reverse the airflow ports 32, 34 to directly return air to the heater, especially because doing so would force the air into the wrong side of the

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blower. Such modification would not appear to function or have any reasonable expectation of success of performing the desired function as set forth by Zurek et al.

MPEP 2143.01 states:

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

and

Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." 916 F.2d at 682, 16 USPQ2d at 1432.

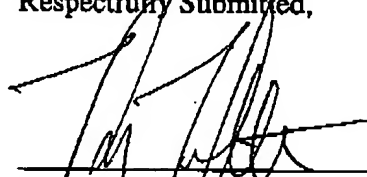
Applicants submit that Zurek et al. do not suggest the desirability of reversing the ports 32, 34, and that the only suggestion or motivation to make such a modification is found in the instant specification, which is improper. Withdrawal of the rejection is respectfully requested.

Claim 5 recites the first and second ports defining jack cavities configured to receive identically-shaped plugs. The Examiner asserts that the ports 32, 34 of Zurek et al. are configured to receive identically shaped plugs or connectors. The claims recite a structure that does not appear to be found in Zurek et al. As stated above, Zurek et al. teach airflow ports. There is no teaching or suggestion that the airflow ports taught by Zurek et al. are configured to receive identically shaped plugs. Withdrawal of the rejection is respectfully requested.

For at least the reasons set forth above, Zurek et al. do not appear to teach or suggest the elements of claims 1, 2, and 5. Withdrawal of the rejection is respectfully requested. Reconsideration and reexamination are respectfully requested. It is submitted that, in light of the above remarks, all pending claims are now in condition for allowance. If a telephone interview would be of assistance, please contact the undersigned attorney at 612-359-9348.

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Respectfully Submitted,



Date: August 25, 2005

Brian N. Tufte, Reg. No. 38,638
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicolet Avenue, Suite 800
Minneapolis, MN 55403-2402
Telephone: (612) 677-9050
Facsimile: (612) 359-9349



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Thesaurus

55 entries found for **port**. The first 10 are listed below.
To select an entry, click on it. For more results, click here.

port(1,noun)
port(2,noun)
port(3,noun)
port(4,transitive verb)
port(5,noun)
port(6,noun)

Go

Merriam-Webster

Dictionary

Thesaurus



port

Main Entry: ²portFunction: *noun*

Etymology: Middle English *porte*, from Middle French, gate, door, from Latin *porta* passage, gate; akin to Latin *portus* port

1 chiefly *Scottish* : GATE

— 2 **a** : an opening (as in a valve seat or valve face) for intake or exhaust of a fluid **b** : the area of opening in a cylinder face of a passageway for the working fluid in an engine; *also* : such a passageway

3 **a** : an opening in a vessel's side (as for admitting light or loading cargo) **b** *archaic* : the cover for a porthole

4 : a hole in an armored vehicle or fortification through which guns may be fired

— 5 : a hardware interface by which a computer communicates with another device or system

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